

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,

Plaintiff,

v.

// CIVIL ACTION NO. 1:07CV98
(Judge Keeley)

MICHELLE L. MICHAEL, CAROL
RENEE DEL VISCIO, as Trustee
FBO of Alec M. Angus, James A.
Michael II, Kylie R. Angus,
Jeancatherin I. Angus, RUTH
MICHAEL, Administratrix DBN of
the Estate of James A. Michael,

Defendants

and

ROBERT L. ANGUS, as parent and
guardian of Alec M. Angus and
Kylie R. Angus,

Interested Party.

ORDER DENYING PLAINTIFF'S MOTION TO DISMISS WITH PREJUDICE,
DENYING PLAINTIFF'S MOTION FOR ATTORNEY FEES AND EXPENSES,
AND HOLDING IN ABEYANCE PLAINTIFF'S MOTION FOR APPOINTMENT
OF A GUARDIAN AD LITEM FOR DEFENDANT MICHELLE L. MICHAEL

On November 4, 2007, upon a joint motion of all parties, this Court stayed further scheduling of this case pending the conclusion of the criminal appeal of defendant Michelle Michael ("Michael"). Currently pending before the Court are three motions: (1) Plaintiff Northwestern Mutual Life Insurance Company's ("Northwestern") Motion to Dismiss with Prejudice; (2) Northwestern's Motion for

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Attorney Fees and Expenses; and (3) Northwestern's Motion for Appointment of a Guardian Ad Litem for Michael.

This case is an interpleader action pursuant to 28 U.S.C. § 1332,¹ filed by Northwestern to determine the proper recipients of the proceeds of its insurance policy on the life of James A. Michael, the deceased husband of defendant Michael. Michael was convicted in state court of murdering her husband and, until her appeal of that conviction is finalized, no determination can occur of the proper recipients of the insurance proceeds from Northwestern's policy.

Pursuant to this Court's order of September 11, 2007, Northwestern deposited the proceeds of its policy in an interest bearing account with the Clerk of this Court. It now seeks dismissal from this case and the attorney fees and costs it incurred for bringing the action. However, the Court may need to appoint a guardian ad litem for Michael after her state criminal appeal concludes. If so, the Court also will have to determine

¹ It is undisputed that there is complete diversity and that the amount in controversy exceeds \$75,000.

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whether Northwestern may be obligated to pay the costs of Michael's guardian ad litem. Consequently, because it finds that Northwestern may still have an interest in these proceedings, the Court **DENIES** its Motion to Dismiss With Prejudice (dkt. no. 18). Further, because Northwestern has done only what it must under its policy to determine the proper beneficiaries, the Court **DENIES** its Motion for Attorney Fees and Costs (dkt. no. 16).

Finally, the Court holds in abeyance Northwestern's Motion for Appointment of a Guardian Ad Litem for Defendant Michelle L. Michael (dkt. no. 15) pending the conclusion of Michael's criminal appeal.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record.

DATED: November 30, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE